

Lease Addendum

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and Urban Development
Office of Housing

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INSTRUCTIONS FOR LEASEHOLD PROJECTS

These instructions and the following Lease Addendum have been prepared for use in connection with mortgage insurance for projects given pursuant to the National Housing Act, as amended, found at 12 U.S.C. § 1701, *et seq.* (“**Act**”), where the mortgaged property is subject to a ground lease. The ground lease term and other provisions must comply with the section of the Act under which the note is endorsed for insurance. The ground lease provisions (other than the affordability restrictions and the restrictions on assignment and subletting as set forth in Article 10 of Ground Lease) must not conflict with any Program Obligations¹ promulgated by the U.S. Department of Housing and Urban Development (“**HUD**”) with respect to such mortgage insurance. All ground rent amounts must have prior written approval by HUD.

¹ “**Program Obligations**” means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Lease Addendum rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD’s official website: (<http://www.hud.gov/offices/adm/hudclips/index.cfm> or a successor location to that site).

These instructions and the following Lease Addendum are based on the presumption that the lease will be a ground lease and all buildings, improvements and fixtures now or hereafter erected will be owned in fee simple by the Tenant and be deemed real estate under local law. The term “**Property**” shall be defined as the legally described land except the buildings and improvements now or hereafter located thereon. If the foregoing presumption is not correct the HUD closing attorney must be contacted for further instructions. The following Lease Addendum must be attached to the ground lease and incorporated therein by reference.

LEASE ADDENDUM

Notwithstanding any other provisions of the Ground Lease, if and so long as the leasehold on the Property subject to that certain Deed of Lease (the “**Ground Lease**”), dated of even date herewith, by and between the BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA (the “**Landlord**”) and WESLEY LEWINSVILLE LIMITED PARTNERSHIP (the “**Tenant**”) is subject to a security instrument insured, reinsured, or held by HUD or leasehold interest is given to HUD in connection with a resale, because of a default under the security instrument, the following provisions of this Lease Addendum shall be in effect:

- a) The Tenant is authorized to obtain a loan, the repayment of which is to be insured by HUD and secured by a security instrument on this leasehold estate and the Improvements². The Tenant is further authorized to execute all documents necessary as determined by HUD and otherwise to comply with Program Obligations for obtaining such an insured loan.

- ~~b) In the event that HUD acquires title to this leasehold estate or otherwise acquires title to the tenant's interest herein, HUD shall have the option to purchase good and marketable fee simple title to the Property and the landlord's interest, if any, in the Improvements, free of all liens and encumbrances except such as may be waived or accepted by HUD. Such option shall be exercised within twelve (12) months after HUD so acquires such leasehold estate or the tenant's interest. The purchase price shall _____ be _____ the _____ sum _____ of _____ Dollars (\$ _____), payable in cash, by check drawn on the U.S. Treasury, by electronic funds transfer or by wire transfer, provided all rents are paid to date of transfer of title. HUD shall, within said twelve months, give written notice to the~~

² “**Improvements**” means the buildings, structures, and alterations now constructed or at any time in the future constructed or placed upon the land, including any future replacements and additions.

~~landlord of its election to exercise said option to purchase. The landlord shall, within thirty (30) days after HUD gives such notice, execute and deliver to HUD a warranty deed of conveyance to HUD as grantee conveying the said fee and interest and containing a covenant against the grantor's acts, but excepting therefrom acts of the tenant and those claiming by, through or under the tenant. Nothing in this option shall require the landlord to pay any taxes or assessments that were due and payable by the tenant.~~

- c) If approved by HUD and Landlord pursuant to Article 10 of the Ground Lease (unless otherwise waived in whole or in part by the Landlord, in its sole discretion), the Tenant may convey, assign, transfer, lease, sublease or sell all or any part of its leasehold interest in the Property and its interest in the Improvements without the need for approval or consent by any other person or entity.
- d) (i) Insurance policies shall be in an amount, and with such company or companies and in such form, and against such risks and hazards, as shall be approved by lender and HUD, provided however, in no event will the types of insurance policies, insured amounts of such policies, or other insurance requirements (i.e. insurer requirements, etc.) be at levels less than the minimum requirements set forth in Article 7 and in Exhibit D of the Ground Lease.
 - (ii) The Landlord shall not take out separate insurance concurrent in form or contributing in the event of loss with that specifically required to be furnished by the Tenant under Exhibit D of the Ground Lease. The Landlord may at its own expense, however, take out separate insurance which is not concurrent in form or not contributing in the event of loss with that specifically required to be furnished by the Tenant under Exhibit D of the Ground Lease.
- e) (i) If all or any part of the Property (i) the Improvements or the leasehold estate shall be taken or damaged by condemnation, that portion of any award attributable to the Improvements or the Tenant's interest in the leasehold estate or damage to the Improvements or to the Tenant's interest in the leasehold estate shall be paid to lender or otherwise disposed of as may be provided in the security instrument. Any portion of the award attributable solely to the underlying fee estate (exclusive of any Improvements) shall be paid to the Landlord. After the date of taking, the annual ground rent shall be reduced ratably by the proportion which the award paid to the Landlord bears to the total value of the Property as established by the amount HUD is to pay, as set forth in paragraph (b) of this Lease Addendum.
 - (ii) In the event of a negotiated sale of all or a portion of the Property or the Improvements, in lieu of condemnation, the proceeds shall be distributed and annual ground rent reduced as provided in cases of condemnation, but the approval of HUD and lender shall be required as to the amount and division of the payments to be received.
- f) The Landlord may terminate the Ground Lease prior to the expiration day of the full

term of the Ground Lease ("**Expiration Date**") after a Tenant default under the Ground Lease ("**Ground Lease Event of Default**"), but only under the following circumstances and procedures. If any Ground Lease Event of Default shall occur, then and in any such event, the Landlord shall at any time thereafter during the continuance of such Ground Lease Event of Default and prior to any cure, give written notice of such default(s) ("**Notice of Default**") to the Tenant, lender and HUD, specifying the Ground Lease Event of Default and the methods of cure, or declaring that a Ground Lease Event of Default is incurable. If the Ground Lease Event of Default is a failure to pay money, the Landlord shall specify and itemize the amounts of such default. Failure to pay money shall be specified as a separate default and not combined with a non-monetary Ground Lease Event of Default. Within sixty (60) days from the date of giving the Notice of Default to the Tenant, the Tenant must cure a monetary default by paying the Landlord all amounts specified in the Notice of Default and must cure any specified Ground Lease Event of Default that is capable of being cured within such period. During the period of 180 days commencing upon the date Notice of Default was given to lender and HUD, lender or HUD may: (a) cure any Ground Lease Event of Default; and (b) commence foreclosure proceedings or institute other state or federal procedures to enforce lender's or HUD's rights with respect to the leasehold or the Tenant Improvements. If the Tenant, lender or HUD reasonably undertake to cure any Ground Lease Event of Default during the applicable cure period and diligently pursues such cure, the Landlord shall grant such further reasonable time as is necessary to complete such cure. If HUD or lender commences foreclosure or other enforcement action within such 180 days, then its cure period shall be extended during the period of the foreclosure or other action and for 90 days after the ownership of the Tenant's rights under the Ground Lease is established in or assigned to HUD or such lender or a purchaser at any foreclosure sale pursuant to such foreclosure or other action. The transfer of the Tenant's rights under the Ground Lease to lender, HUD or purchaser, pursuant to such foreclosure or other action shall be deemed a termination of any incurable Ground Lease Event of Default and such terminated Ground Lease Event of Default shall not give the Landlord any right to terminate the Ground Lease. Such purchaser may cure a curable Ground Lease Event of Default within said 90 days. If after the expiration of all of the foregoing cure periods, no cure or termination of an existing Ground Lease Event of Default has been achieved as aforesaid, then and in that event, the Ground Lease shall terminate, and, on such date, the term of the Ground Lease shall expire and terminate and all rights of the Tenant under the Ground Lease shall cease and the Improvements, subject to the security instrument and the rights of lender thereunder, shall be and become the property of the Landlord. All costs and expenses incurred by or on behalf of the Landlord (including, without limitation, reasonable attorneys' fees and expenses) occasioned by any default by the Tenant under the Ground Lease shall constitute additional rent hereunder. The Landlord shall have no right to terminate the Ground Lease except as provided in this paragraph (f). The time periods to cure a Ground Lease Event of Default set forth in this paragraph (f) are in lieu of, and not in addition to, those time periods set forth in Article 24 of the Ground Lease and shall only apply while a security instrument insured, reinsured or held by HUD encumbers the Property or the Improvements.

- g) Upon termination of the Ground Lease pursuant to paragraph (f) above, the Landlord shall immediately seek to obtain possession of the Property and Improvements. Upon acquiring such possession, the Landlord shall notify HUD and lender in writing. Lender and HUD shall each have six (6) months from the date of receipt of such notice of acquisition to elect to take, as Tenant, a new ground lease on the Property and on the Improvements. Such new ground lease (the “**New Ground Lease**”) shall have a term equal to the unexpired portion of the term of the Ground Lease immediately prior to such termination and shall, except as otherwise provided herein, be on the same terms and conditions as contained in the Ground Lease, except that lender's or HUD's liability for ground rent shall not extend beyond their occupancy under such Ground Lease. The Landlord shall tender such New Ground Lease to lender or HUD within thirty (30) days after a request for such New Ground Lease and shall deliver possession of the Property and Improvements immediately upon execution of the New Ground Lease. Upon executing a New Ground Lease, lender or HUD shall pay to the Landlord any unpaid ground rent due or that would have become due under the Ground Lease to the date of the execution of the New Ground Lease, including any taxes which were liens on the Property or the Improvements and which were paid by the Landlord, less any net rentals or other income which the Landlord may have received on account of the Property and Improvements since the date of default under the Ground Lease.
- ~~h) The landlord agrees that within ten (10) days after receipt of written request from the tenant, it will join in any and all applications for permits, licenses or other authorizations required by any Governmental Authority³ in connection with any work which the tenant may do hereunder and will also join in any grants for easements for electric telephone, telecommunications, cable, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary in the operation of the Property or of any Improvements and if, at the expiration of such ten (10) day period, the landlord shall not have joined in any such application, or grants for easements, the tenant shall have the right to execute such application and grants in the name of the landlord, and for that purpose, the landlord hereby irrevocably appoints the tenant as its attorney-in-fact to execute such papers on behalf of the landlord, only to the extent that a public body as landlord may do so within the exercise of its municipal powers and responsibilities.~~
- i) Nothing in the Ground Lease shall require the Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the Landlord or any income excess profits or revenue tax, or any other tax, assessment charge or levy upon the rent payable by the Tenant under the Ground Lease.

³ “**Governmental Authority**” means any board, commission, department or body of any municipal, county, state, tribal or federal governmental unit, including any U.S. territorial government, and any public or quasi-public authority, or any subdivision of any of them, that has or acquires jurisdiction over the mortgaged property, including the use, operation or improvement of the mortgaged property.

- j) All notices, demands and requests which are required to be given by the Landlord, the Tenant, lender or HUD in connection with the Ground Lease shall be in writing and shall be sent by registered or certified mail, postage prepaid, and addressed to the address of the party as given in this instrument unless a request for a change in this address has been sent to the party giving the notice by registered or certified mail prior to the time when such notice is given.
- k) Notwithstanding anything contained in this Lease Addendum to the contrary, unless expressly set forth in this Lease Addendum, no provision contained herein is intended to, nor shall it be construed, to subordinate or limit any of terms, covenants and conditions of the Ground Lease including, but not limited to, the Affordable Dwelling Unit requirements.

All notices to lender or HUD shall be addressed as follows:

If to Lender: Wells Fargo Bank, National Association
2010 Corporate Ridge
Suite 1000
McLean, Virginia 22102
Attn: Servicing Department

If to HUD: : U.S. Department of Housing and Urban Development
City Crescent Building
10 S. Howard Street, 5th Floor
Baltimore, Maryland 21201

If to Tenant: Wesley Lewinsville Limited Partnership
c/o Wesley Housing Development Corporation of Northern
Virginia
5515 Cherokee Ave., Suite 200
Alexandria, Virginia 22312

With a copy to:

Erik T. Hoffman
Klein Hornig LLP
1325 G. Street, Suite 707
Washington, DC 20005

And to:

Wincopin Circle LLLP
c/o Enterprise Community
Asset Management, Inc.

70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, Maryland 21044

With a copy to:

Kenneth S. Gross, Esq.
Gallagher Evelius & Jones LLP
218 North Charles Street
Suite 400
Baltimore, Maryland 21201

If to Landlord: Board of Supervisors of Fairfax County, Virginia
12000 Government Center Parkway
Fairfax, Virginia 22035-0064
Attention: County Executive

With a copy to:

Office of the County Attorney
Attention: County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035-0064

- l) This Ground Lease shall not be modified without the written consent of HUD and lender.
- m) The provisions of this Lease Addendum benefit lender and HUD and are specifically declared to be enforceable against the parties to the Ground Lease and all other persons by lender and HUD. In the event of any conflict, inconsistency or ambiguity between the provisions of this Lease Addendum and the provisions of any other part of the Ground Lease, the provisions of this Lease Addendum shall prevail and control.
- n) At any time during the term of the Ground Lease, the loan on Tenant's leasehold interest in the Property and its interest in the Improvements ceases to be insured by (or held by) HUD, this Lease Addendum shall automatically terminate and thereafter be null and void and of no force or effect.
- o) None of the Tenant's indemnification provisions in the Deed of Lease shall apply to HUD in the event that HUD become the owner of the senior housing facility pursuant to the terms of the Anti-Deficiency Act 31 U.S.C. § 1341.

Warning

Any person who knowingly presents a false, fictitious or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability and administrative sanctions.